

UNITED STATES DISTRICT COURT  
FOR THE MIDDLE DISTRICT OF TENNESSEE  
NASHVILLE DIVISION

UNITED STATES OF AMERICA )  
 )  
 v. ) NO. 3:07-cr-00159  
 ) JUDGE CRENSHAW  
JAMES McWHORTER )

**DEFENDANT'S SUPPLEMENTAL RESPONSE TO MOTION TO RE-OPEN CASE**

James McWhorter, through undersigned counsel, files this supplemental response to the government's motion to re-open his case to turn over assets for restitution.

Mr. McWhorter has stated that he does want undersigned counsel to represent him in this matter.

McWhorter does not object to the government's request to re-open his case so that it can sell the Rolex watches and apply the proceeds to his restitution debt. He confirms that he signed the waiver that the government has submitted.

Nonetheless, he does object to the government's request to destroy the watches if they turn out to be counterfeit Rolexes. He is certain that the watches seized from him by White County were genuine Rolex watches. He maintains that, if the watches now provided by White County are counterfeit, then White County must have mishandled his property. If the watches provided are counterfeit, they should be preserved as evidence so McWhorter can pursue the matter with White County. Notably, McWhorter is separately litigating a motion under 28 U.S.C. § 2255 that alleges that officials in White County engaged in misconduct against him. *See James McWhorter v. United States*, Case No. 3:16-cv-01942 (M.D. Tenn.).

In any event, even if the watches provided by White County are counterfeit, they should not be destroyed because it is not illegal to simply possess counterfeit items. *See generally* 18 U.S.C. § 2320 (making it illegal to traffic in counterfeit products); U.S. Attorney's Manual, Criminal Resource Manual § 1709 ("Thus it is not a crime under this act for an individual knowingly to purchase goods bearing counterfeit marks, if the purchase is for the individual's personal use.") McWhorter makes this point only to show there appears to be no law compelling the destruction of the watches even if counterfeit. He emphasizes, however, that the watches seized from him by White County were genuine Rolexes.

Respectfully submitted,

*s/ Michael C. Holley* \_\_\_\_\_  
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**CERTIFICATE OF SERVICE**

I hereby certify that on March 8, 2017, I electronically filed the foregoing Defendant's Supplemental Response to Motion to Re-open Case with the U.S. District Court Clerk by using the CM/ECF system, which will send a Notice of Electronic Filing to the following Debra Phillips, Assistant United States Attorney, 110 Ninth Avenue South, Suite A961, Nashville, TN 37203.

*s/ Michael C. Holley* \_\_\_\_\_  
MICHAEL C. HOLLEY